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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Twin Tech Management, Inc.

File: B-230862

Date: July 22, 1988

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### DIGEST

Small Business Administration (SBA) determination of ineligibility for a certificate of competency on the basis that the bidder has not met the requirement under the SBA regulations that it perform a significant portion of the contract work with its own facilities and personnel is tantamount to an affirmation of the agency's original determination of nonresponsibility and therefore is not subject to further review by the General Accounting Office except in limited circumstances not present in this case.

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### DECISION

Twin Tech Management, Inc., protests the determination of the Department of the Treasury that it was nonresponsible under invitation for bids (IFB) No. A-88-3, for the renovation of the Treasury Annex Building in Washington, D.C. We dismiss the protest.

Although Twin Tech submitted the apparent low bid, Treasury determined that the firm was nonresponsible primarily because of a perceived lack of sufficient financial resources to perform the contemplated contract. Since Twin Tech is a small business concern, Treasury referred the nonresponsibility determination to the Small Business Administration (SBA) for review under SBA's certificate of competency (COC) procedures, as required by 15 U.S.C. § 637(b)(7) (1982). Twin Tech then filed for a COC and provided financial information to the SBA to support its application, including balance sheets, unaudited financial statements, cash flow projections, and letters of credit. The SBA, however, refused to issue a COC on the ground that Twin Tech would be subcontracting 91.6 percent of the work to be performed under the contract, in conflict with SBA's requirement, 13 C.F.R. § 125.5(b) (1988), that a small business concern perform a significant portion of the proposed contract with its own facilities and personnel in order to be eligible for a COC.

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Twin Tech then filed a protest with Treasury challenging the nonresponsibility determination; in response, Treasury officials met with Twin Tech and provided the firm an opportunity to submit updated information concerning its responsibility. After evaluating the additional information and references supplied by Twin Tech, Treasury reaffirmed the nonresponsibility determination and denied Twin Tech's protest. Likewise, the SBA reaffirmed its conclusion after considering additional information supplied by Twin Tech in support of its claim that it would perform 27 percent of the contract. Twin Tech thereupon filed this protest with our Office.

Twin Tech again disputes the nonresponsibility determination, arguing that it has the financial resources and capacity needed to perform the contemplated contract.

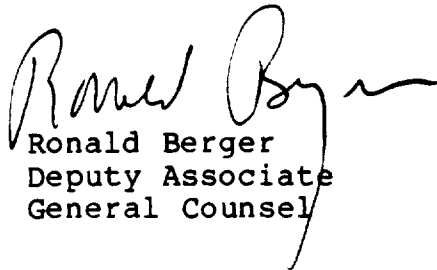
The SBA, not our Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business concern's responsibility. Our Office limits its review of the denial of a COC to instances in which the protester makes a showing of possible fraud or bad faith on the part of the contracting officials, or of a failure by the SBA to consider vital information bearing on the firm's responsibility. See Coliseum Construction, Inc., B-229691, et al., Mar. 1, 1988, 88-1 CPD ¶ 213.

Moreover, we generally regard a finding of COC ineligibility by the SBA on the ground that a bidder would not be performing a significant portion of the contract as tantamount to an affirmation of the procuring agency's determination of nonresponsibility and, therefore, not subject to our review absent a showing either of possible fraud or bad faith or that the SBA's ineligibility finding may be inconclusive because the small business is able to introduce new evidence of its eligibility for a COC. Bio-Tek, Inc.--Reconsideration, B-224740.2, Oct. 21, 1986, 86-2 CPD ¶ 440; see Art's Supplies and Services--Reconsideration, B-210156.2, Sept. 23, 1983, 83-2 CPD ¶ 365. There has been no such showing here.

First, Twin Tech has neither alleged nor shown fraud or bad faith on the part of government officials. Second, while Twin Tech reiterates in its protest its claim that it offered to perform at least 27 percent of the contract with its own resources, the firm's calculations are based on the same documents it submitted to Treasury and the SBA (where it made the same assertion). Based upon the information provided by Twin Tech, SBA has determined that the firm would not perform a significant portion of the contract with its own resources, and Treasury has subsequently confirmed

the SBA's finding that Twin Tech would subcontract at least 90 percent of the contract effort. Although Twin Tech disagrees with these conclusions, it has neither shown that the SBA failed to consider vital information nor presented new evidence of its eligibility for a COC. Consequently, our Office has no basis for undertaking an independent review of the SBA's determination of ineligibility for a COC or Treasury's finding of nonresponsibility.

The protest is dismissed.



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